
SENATE BILL No. 366

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-37-4; IC 33-39-6-2.

Synopsis: Prosecuting attorneys and the DOC. Authorizes the prosecuting attorney in a county in which is located an institution operated by the department of correction (DOC) that houses at least 100 and fewer than 1,500 juvenile offenders to appoint an additional deputy prosecuting attorney. (Current law authorizes the prosecuting attorney in a county in which is located an institution operated by the DOC that houses at least 100 and fewer than 1,500 adult offenders to appoint an additional deputy prosecuting attorney.) Increases the following court fees by \$1: (1) criminal costs fee; (2) infraction or ordinance violation costs fee; (3) juvenile costs fee; (4) civil costs fee; (5) small claims costs fee; and (6) probate costs fee.

Effective: July 1, 2009.

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January 8, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 366

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-37-4-1, AS AMENDED BY P.L.176-2005,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. (a) For each action that results in a felony
4 conviction under IC 35-50-2 or a misdemeanor conviction under
5 IC 35-50-3, the clerk shall collect from the defendant a criminal costs
6 fee of ~~one hundred twenty dollars (\$120)~~: **one hundred twenty-one**
7 **dollars (\$121)**.

8 (b) In addition to the criminal costs fee collected under this section,
9 the clerk shall collect from the defendant the following fees if they are
10 required under IC 33-37-5:

11 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or
12 IC 33-37-5-4).

13 (2) A marijuana eradication program fee (IC 33-37-5-7).

14 (3) An alcohol and drug services program user fee
15 (IC 33-37-5-8(b)).

16 (4) A law enforcement continuing education program fee
17 (IC 33-37-5-8(c)).



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(5) A drug abuse, prosecution, interdiction, and correction fee (IC 33-37-5-9).

(6) An alcohol and drug countermeasures fee (IC 33-37-5-10).

(7) A child abuse prevention fee (IC 33-37-5-12).

(8) A domestic violence prevention and treatment fee (IC 33-37-5-13).

(9) A highway work zone fee (IC 33-37-5-14).

(10) A deferred prosecution fee (IC 33-37-5-17).

(11) A document storage fee (IC 33-37-5-20).

(12) An automated record keeping fee (IC 33-37-5-21).

(13) A late payment fee (IC 33-37-5-22).

(14) A sexual assault victims assistance fee (IC 33-37-5-23).

(15) A public defense administration fee (IC 33-37-5-21.2).

(16) A judicial insurance adjustment fee (IC 33-37-5-25).

(17) A judicial salaries fee (IC 33-37-5-26).

(18) A court administration fee (IC 33-37-5-27).

(19) A DNA sample processing fee (IC 33-37-5-26.2).

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 requires payment of those fees by the accused person. The pretrial diversion program fee is:

(1) an initial user's fee of fifty dollars (\$50); and

(2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, not later than thirty (30) days after the fees are collected:

(1) The pretrial diversion fee.

(2) The marijuana eradication program fee.

(3) The alcohol and drug services program user fee.

(4) The law enforcement continuing education program fee.

The auditor or fiscal officer shall deposit fees transferred under this subsection in the appropriate user fee fund established under IC 33-37-8.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

(1) The clerk shall apply the partial payment to general court costs.

(2) If there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk

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shall distribute the remainder of the partial payment for deposit in the appropriate county user fee fund.

(3) If there is money remaining after distribution under subdivision (2), the clerk shall distribute the remainder of the partial payment for deposit in the state user fee fund.

(4) If there is money remaining after distribution under subdivision (3), the clerk shall distribute the remainder of the partial payment to any other applicable user fee fund.

(5) If there is money remaining after distribution under subdivision (4), the clerk shall apply the remainder of the partial payment to any outstanding fines owed by the defendant.

SECTION 2. IC 33-37-4-2, AS AMENDED BY P.L.176-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

(1) for a violation constituting an infraction; or

(2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);

the clerk shall collect from the defendant an infraction or ordinance violation costs fee of ~~seventy dollars (\$70)~~; **seventy-one dollars (\$71)**.

(b) In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees, if they are required under IC 33-37-5:

(1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).

(2) An alcohol and drug services program user fee (IC 33-37-5-8(b)).

(3) A law enforcement continuing education program fee (IC 33-37-5-8(c)).

(4) An alcohol and drug countermeasures fee (IC 33-37-5-10).

(5) A highway work zone fee (IC 33-37-5-14).

(6) A deferred prosecution fee (IC 33-37-5-17).

(7) A jury fee (IC 33-37-5-19).

(8) A document storage fee (IC 33-37-5-20).

(9) An automated record keeping fee (IC 33-37-5-21).

(10) A late payment fee (IC 33-37-5-22).

(11) A public defense administration fee (IC 33-37-5-21.2).

(12) A judicial insurance adjustment fee (IC 33-37-5-25).

(13) A judicial salaries fee (IC 33-37-5-26).

(14) A court administration fee (IC 33-37-5-27).

(15) A DNA sample processing fee (IC 33-37-5-26.2).

(c) The clerk shall transfer to the county auditor or fiscal officer of

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the municipal corporation the following fees, not later than thirty (30) days after the fees are collected:

(1) The alcohol and drug services program user fee (IC 33-37-5-8(b)).

(2) The law enforcement continuing education program fee (IC 33-37-5-8(c)).

(3) The deferral program fee (subsection (e)).

The auditor or fiscal officer shall deposit the fees in the user fee fund established under IC 33-37-8.

(d) The defendant is not liable for any ordinance violation costs fee in an action if all the following apply:

(1) The defendant was charged with an ordinance violation subject to IC 33-36.

(2) The defendant denied the violation under IC 33-36-3.

(3) Proceedings in court against the defendant were initiated under IC 34-28-5 (or IC 34-4-32 before its repeal).

(4) The defendant was tried and the court entered judgment for the defendant for the violation.

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is:

(1) an initial user's fee not to exceed fifty-two dollars (\$52); and

(2) a monthly user's fee not to exceed ten dollars (\$10) for each month the person remains in the deferral program.

(f) The fees prescribed by this section are costs for purposes of IC 34-28-5-5 and may be collected from a defendant against whom judgment is entered. Any penalty assessed is in addition to costs.

SECTION 3. IC 33-37-4-3, AS AMENDED BY P.L.176-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The clerk shall collect a juvenile costs fee of ~~one hundred twenty dollars (\$120)~~ **one hundred twenty-one dollars (\$121)** for each action filed under any of the following:

(1) IC 31-34 (children in need of services).

(2) IC 31-37 (delinquent children).

(3) IC 31-14 (paternity).

(b) In addition to the juvenile costs fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

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(1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).

(2) A marijuana eradication program fee (IC 33-37-5-7).

(3) An alcohol and drug services program user fee (IC 33-37-5-8(b)).

(4) A law enforcement continuing education program fee (IC 33-37-5-8(c)).

(5) An alcohol and drug countermeasures fee (IC 33-37-5-10).

(6) A document storage fee (IC 33-37-5-20).

(7) An automated record keeping fee (IC 33-37-5-21).

(8) A late payment fee (IC 33-37-5-22).

(9) A public defense administration fee (IC 33-37-5-21.2).

(10) A judicial insurance adjustment fee (IC 33-37-5-25).

(11) A judicial salaries fee (IC 33-37-5-26).

(12) A court administration fee (IC 33-37-5-27).

(13) A DNA sample processing fee (IC 33-37-5-26.2).

(c) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees not later than thirty (30) days after they are collected:

(1) The marijuana eradication program fee (IC 33-37-5-7).

(2) The alcohol and drug services program user fee (IC 33-37-5-8(b)).

(3) The law enforcement continuing education program fee (IC 33-37-5-8(c)).

The auditor or fiscal officer shall deposit the fees in the appropriate user fee fund established under IC 33-37-8.

SECTION 4. IC 33-37-4-4, AS AMENDED BY P.L.174-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The clerk shall collect a civil costs fee of ~~one hundred dollars (\$100)~~ **one hundred one dollars (\$101)** from a party filing a civil action. This subsection does not apply to the following civil actions:

(1) Proceedings to enforce a statute defining an infraction under IC 34-28-5 (or IC 34-4-32 before its repeal).

(2) Proceedings to enforce an ordinance under IC 34-28-5 (or IC 34-4-32 before its repeal).

(3) Proceedings in juvenile court under IC 31-34 or IC 31-37.

(4) Proceedings in paternity under IC 31-14.

(5) Proceedings in small claims court under IC 33-34.

(6) Proceedings in actions described in section 7 of this chapter.

(b) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees, if they are required under

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IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A support and maintenance fee (IC 33-37-5-6).
- (3) A document storage fee (IC 33-37-5-20).
- (4) An automated record keeping fee (IC 33-37-5-21).
- (5) A public defense administration fee (IC 33-37-5-21.2).
- (6) A judicial insurance adjustment fee (IC 33-37-5-25).
- (7) A judicial salaries fee (IC 33-37-5-26).
- (8) A court administration fee (IC 33-37-5-27).
- (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).
- (10) A garnishee service fee (IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4)).

SECTION 5. IC 33-37-4-6, AS AMENDED BY P.L.174-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) For each small claims action, the clerk shall collect the following fees:

- (1) From the party filing the action:
 - (A) a small claims costs fee of ~~thirty-five dollars (\$35);~~ **thirty-six dollars (\$36);**
 - (B) a small claims service fee of ten dollars (\$10) for each named defendant that is not a garnishee defendant; and
 - (C) if the party has named more than three (3) garnishees or garnishee defendants, a small claims garnishee service fee of ten dollars (\$10) for each garnishee or garnishee defendant in excess of three (3).
- (2) From any party adding a defendant that is not a garnishee defendant, a small claims service fee of ten dollars (\$10) for each defendant that is not a garnishee defendant added in the action.
- (3) From any party adding a garnishee or garnishee defendant, a small claims garnishee service fee of ten dollars (\$10) for each garnishee or garnishee defendant added to the action. However, a clerk may not collect a small claims garnishee service fee for the first three (3) garnishees named in the action.

However, a clerk may not collect a small claims costs fee, small claims service fee, or small claims garnishee service fee for a small claims action filed by or on behalf of the attorney general.

(b) In addition to a small claims costs fee, small claims service fee, and small claims garnishee service fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or

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IC 33-37-5-4).

(2) A document storage fee (IC 33-37-5-20).

(3) An automated record keeping fee (IC 33-37-5-21).

(4) A public defense administration fee (IC 33-37-5-21.2).

(5) A judicial insurance adjustment fee (IC 33-37-5-25).

(6) A judicial salaries fee (IC 33-37-5-26).

(7) A court administration fee (IC 33-37-5-27).

SECTION 6. IC 33-37-4-7, AS AMENDED BY P.L.176-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) Except as provided under subsection (c), the clerk shall collect from the party filing the action a probate costs fee of ~~one hundred twenty dollars (\$120)~~ **one hundred twenty-one dollars (\$121)** for each action filed under any of the following:

(1) IC 6-4.1-5 (determination of inheritance tax).

(2) IC 29 (probate).

(3) IC 30 (trusts and fiduciaries).

(b) In addition to the probate costs fee collected under subsection (a), the clerk shall collect from the party filing the action the following fees, if they are required under IC 33-37-5:

(1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).

(2) A document storage fee (IC 33-37-5-20).

(3) An automated record keeping fee (IC 33-37-5-21).

(4) A public defense administration fee (IC 33-37-5-21.2).

(5) A judicial insurance adjustment fee (IC 33-37-5-25).

(6) A judicial salaries fee (IC 33-37-5-26).

(7) A court administration fee (IC 33-37-5-27).

(c) A clerk may not collect a court costs fee for the filing of the following exempted actions:

(1) Petition to open a safety deposit box.

(2) Filing an inheritance tax return, unless proceedings other than the court's approval of the return become necessary.

(3) Offering a will for probate under IC 29-1-7, unless proceedings other than admitting the will to probate become necessary.

SECTION 7. IC 33-39-6-2, AS AMENDED BY P.L.127-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A prosecuting attorney may appoint one (1) chief deputy prosecuting attorney. The maximum annual salary paid by the state of a chief deputy prosecuting attorney appointed under this subsection is as follows:

(1) If the prosecuting attorney is a full-time prosecuting attorney

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1 appointing a full-time chief deputy prosecuting attorney, the
 2 annual salary of the chief deputy prosecuting attorney is equal to
 3 seventy-five percent (75%) of the salary paid by the state to a
 4 full-time prosecuting attorney.

5 (2) If the prosecuting attorney is a full-time prosecuting attorney
 6 appointing a part-time chief deputy prosecuting attorney, the
 7 annual salary of the chief deputy prosecuting attorney is equal to
 8 seventy-five percent (75%) of the salary paid by the state to a
 9 part-time prosecuting attorney serving the judicial district served
 10 by the chief deputy prosecuting attorney.

11 (3) If the prosecuting attorney is a part-time prosecuting attorney
 12 appointing a full-time chief deputy prosecuting attorney, the
 13 annual salary of the chief deputy prosecuting attorney is equal to
 14 seventy-five percent (75%) of the salary paid by the state to a
 15 full-time prosecuting attorney.

16 (4) If the prosecuting attorney is a part-time prosecuting attorney
 17 appointing a part-time chief deputy prosecuting attorney, the
 18 annual salary of the chief deputy prosecuting attorney is equal to
 19 seventy-five percent (75%) of the salary paid by the state to a
 20 part-time prosecuting attorney.

21 (5) The state may not pay any amount of the annual salary of a
 22 chief deputy prosecuting attorney appointed under this section by
 23 the prosecuting attorney of the ninety-first judicial circuit.

24 (b) The prosecuting attorney in a county in which is located at least
 25 one (1) institution operated by the department of correction that houses
 26 at least one thousand five hundred (1,500) offenders may appoint two
 27 (2) additional deputy prosecuting attorneys. In a county having two (2)
 28 institutions, each of which houses at least one thousand five hundred
 29 (1,500) offenders, the prosecuting attorney may appoint a third deputy
 30 prosecuting attorney.

31 (c) The prosecuting attorney in a county in which is located an
 32 institution operated by the department of correction that houses at least
 33 one hundred (100) but less than one thousand five hundred (1,500)
 34 adult offenders may appoint one (1) additional deputy prosecuting
 35 attorney. **The prosecuting attorney in a county in which is located**
 36 **an institution operated by the department of correction that houses**
 37 **at least one hundred (100) but less than one thousand five hundred**
 38 **(1,500) juvenile offenders may appoint one (1) additional deputy**
 39 **prosecuting attorney.**

40 (d) The prosecuting attorney in a county in which is located a state
 41 institution (as defined in IC 12-7-2-184) that has a daily population of
 42 at least three hundred fifty (350) patients may appoint one (1)

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1 additional deputy prosecuting attorney.

2 (e) The annual salary of a deputy prosecuting attorney appointed
3 under subsections (b) through (d) may not be less than seventy-five
4 percent (75%) of the annual salary of the appointing prosecuting
5 attorney, as determined under section 5 of this chapter as though the
6 prosecuting attorney had not elected full-time status.

7 (f) The salaries provided in this section shall be paid by the state
8 once every two (2) weeks from the state general fund. There is
9 appropriated annually out of the general fund of the state sufficient
10 funds to pay any amount necessary. However, the salaries fixed in this
11 chapter are determined to be maximum salaries to be paid by the state.
12 This chapter does not limit the power of counties comprising the
13 respective judicial circuits to pay additional salaries upon proper action
14 by the appropriate county officials.

15 (g) The various county councils shall appropriate annually for other
16 deputy prosecuting attorneys, investigators, clerical assistance, witness
17 fees, out-of-state travel, postage, telephone tolls and telegraph, repairs
18 to equipment, office supplies, other operating expenses, and equipment
19 an amount necessary for the proper discharge of the duties imposed by
20 law upon the office of the prosecuting attorney of each judicial circuit.

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